

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

OREGON FIREARMS FEDERATION,)	
INC.,)	
)	
Plaintiffs,)	
)	
vs.)	Case 2:22-cv-01815-IM
)	2:22-cv-01859-IM
TINA KOTEK, et al,)	2:22-cv-01862-IM
)	2:22-cv-01869-IM
)	
Defendants.)	

DEPOSITION OF 30(b)(6) KAREN LeJUNE

THE DEPOSITION OF KAREN LeJUNE was taken as a witness on behalf of the Plaintiffs, pursuant to Federal Rules of Civil Procedure, at 9:00 a.m., Friday, the 5th of May 2023, at the offices of the Oregon State Police, 3565 Trelstad Avenue SE, in the City of Salem, County of Marion, State of Oregon, before Traci R. Moore, Professional Court Reporter in and for the State of Oregon.

Page 2

APPEARANCES

FOR THE PLAINTIFF EYRE:

JURISLAW LLP
By: Shawn M. Lindsay
shawn@jurislawyer.com
Three Centerpoine Drive
Suite 160
Lake Oswego, Oregon 97035
(503) 986-1475

FOR THE PLAINTIFF OREGON FIREARMS FEDERATION:

VAN NESS WILLIAMSON
By: Leonard W. Williamson
l.williamson@vwlp.com
960 Liberty Street SE
Suite 100
Salem, Oregon 97302
(503) 365-8800

FOR THE DEFENDANTS:

MARKOWITZ HERBOLD PC
By: Harry B. Wilson
harrywilson@markowitzherbold.com
1455 Southwest Broadway
Suite 1900
Portland, Oregon 97201-1900

ALSO PRESENT: Wendy Landers

Page 16

1 the FFL submits it to the FICS Unit. Tell me
2 about how the FFL actually submits it to the
3 FICS Unit.

4 A. So there are two ways that an FFL
5 dealer can submit a background check, either over
6 the phone or we have a web dealer portal.

7 If the dealer enters the information
8 over the dealer portal, the dealer in some
9 version or form, they would enter the information
10 that's collected on the 4473, and they can submit
11 that information electronically through the web.

12 When they call us over the phone,
13 somebody in the FICS Unit will get that
14 information from the 4473 from the dealer. The
15 FICS Unit will enter that information into our
16 program, and at that point, whether it's a web or
17 a phone call, the person in the FICS Unit reviews
18 that background check.

19 I'm going to go back a second on the
20 web. When the dealer submits a background check
21 over the web, there is -- the queries are
22 automatically sent for the background check. And
23 when those queries return, there's an automatic
24 process in the system.

25 And if there is not a reason for

1 somebody to manually review that, the system can
2 automatically approve that background check, and
3 that happens in -- recently between 38 to 41
4 percent of the time.

5 Q. Thank you. And I will get into that
6 a little bit more in-depth as well, but let's
7 stay with the FFL dealer submitting information
8 to the FICS Unit.

9 So I understand there's two ways for
10 an FFL dealer to submit, what I will call, via
11 Internet or online or by telephone. Any other
12 ways, such as mail or fax or --

13 A. At this time they would only submit
14 either over the phone or over the web.

15 Q. And let's talk about the online
16 submittal. How is that information submitted to
17 you? Is it as a PDF or as a text file? How's
18 the electronic package sent from the FFL to the
19 FICS Unit?

20 A. So OSP, for the FICS Unit, we have a
21 dealer portal, which is a system that our vendor
22 created. The dealer can enter the information
23 into that program and they submit it
24 electronically to the FICS Unit, and then we pull
25 it up on our side on our -- our program that was

1 vary, depending on how many calls that we receive
2 and how quickly we can answer the dealer's
3 questions or do a background check.

4 Q. I understand it can vary. What's
5 some of the time frames that you've seen, and if
6 you can give an average?

7 A. I don't know necessarily what the
8 average is, but recently we've had a longer wait
9 time. You know, sometimes there is not a wait
10 time and people can get through right away, other
11 times it is longer, depending on, you know, how
12 many people are calling in.

13 So it could be -- recently, because
14 of the higher volume we've had, it could be, you
15 know, one or two hours, sometimes maybe three
16 hours.

17 Q. And who would be able to answer that
18 question about the average?

19 A. Let's see. So currently the
20 FICS Unit has a call center, but that -- the wait
21 time for somebody to answer is not something that
22 we track or have a report for.

23 Q. If you were desiring to determine
24 the average wait time for the last 12 months, how
25 would you go about to determine that?

1 A. We would have to look at the
2 reporting in the call center program that we use
3 to get that information.

4 Q. All right. Let's move on
5 to -- well, going back now to the electronic
6 submittal to the FICS Unit by the FFL. How does
7 the FICS Unit know that a background check
8 request has been received from a dealer?

9 A. So when a dealer submits a
10 background check online, it goes through an
11 automated process of requesting the queries and
12 receiving the responses.

13 It will go through an automated
14 check, and if there is nothing that the FICS Unit
15 manually needs to review, you know, 38 to
16 41 percent of those background checks can be
17 automatically approved by the system, so there's
18 nobody in the FICS Unit that would necessarily
19 see those.

20 If the background check does not
21 pass the auto check, it goes into a web queue.
22 And we can see, if there are any transactions in
23 the web queue, how many are in that web queue to
24 be processed.

25 Q. So the FFL dealer submits it

Page 29

1 people work that day, and so the number of staff
2 assigned to that task can vary depending on the
3 day.

4 Generally, like on a Saturday, it's
5 our busiest day receiving background checks, so
6 generally there's more people assigned to work
7 that day and there's more people assigned to the
8 web to review those transactions that day.

9 Q. And who makes that decision on how
10 many are assigned to the web check queue?

11 A. So, the FICS Unit has lead workers
12 that they are the ones who are responsible for
13 setting the assignments. But during the day,
14 depending on the workload and any changes that
15 need to be made, either, you know, a lead worker
16 or a supervisor can make those changes.

17 Q. And what are the decision
18 points, what are the factors that help that
19 person make that decision?

20 A. The person making that decision
21 would look at basically the overall, you know,
22 operational need for that day and balance all of
23 the work that needs to be accomplished that day.

24 Q. Do you know what the current web
25 queue number is today?

1 A. This morning it was just under
2 12,000.

3 Q. I understand there's been a lot of
4 background checks of higher volume recently.

5 A. (Nodding head.)

6 Q. Is that a high number to you or a
7 low number to you, considering the past three
8 years?

9 A. So currently that is a high backlog.
10 After Ballot Measure 114 passed, in that
11 two-month period, the FICS Unit received
12 approximately five-month's worth of transactions;
13 so the FICS Unit is continuing to work through
14 that backlog.

15 The numbers that we've experienced
16 have been higher, you know, at this point in time
17 than at any time I've worked in the FICS Unit,
18 but we are addressing that backlog with the staff
19 that we have available to work that backlog, and
20 while at the same time, you know, every day more
21 background checks are coming in, so...

22 Q. And how are you addressing that?

23 A. How are we addressing the backlog?

24 Q. Right. Yeah, I think you just said
25 that, "we're working to address it," I think is

1 the exact word used. I'm wondering what you mean
2 by that,

3 A. So, the FICS Unit has offered
4 overtime to our employees who process the
5 background checks. We've also have limited
6 duration
7 that -- limited duration positions that we have
8 that we have been recruiting for, so we have been
9 trying to hire extra staff to help address the
10 work in the unit.

11 And we've also had troopers,
12 beginning in December, that are helping process
13 background checks in the FICS Unit also.

14 Q. So more bodies and more employees?

15 A. Yes.

16 Q. Any efforts to increase the
17 automatic approval?

18 A. So the -- the FICS Unit is always
19 interested in trying to automate the process as
20 much as possible. We do have the new system,
21 but, you know, the background checks we've
22 received -- at the beginning there's the
23 automated process to approve background checks,
24 if there's nothing that we need to look at.

25 Once it comes to an examiner to

1 review, that is a -- it's still a pretty manual
2 process, but as much as we can we use the
3 technology available to us to make that as
4 efficient as possible so the turnaround time is
5 as low as possible on transactions.

6 Q. So let's talk about this automatic
7 approval verses the kicked out to the web queue.
8 What causes it to be kicked to the web queue or
9 what are some of the causes?

10 A. Some of the reasons somebody would
11 go into the web queue is the person may have a
12 criminal history or something on their background
13 check related to something in their past that
14 needs to be reviewed.

15 Sometimes the system -- it's based
16 on near hits to the name, date of birth, social,
17 that the person enters into the system.

18 Q. You said "near hits."

19 A. Near hits.

20 Q. Explain that.

21 A. So, I'll just use an example.
22 Somebody with a common name, let's say, Bob Smith
23 there's, you know, a lot of people with that same
24 name.

25 And so the system, when it queries,

Page 33

1 it's looking for anything that's a possible match
2 to that person; so anything that's a near hit to
3 their name, date of birth, and social would cause
4 somebody to look at that transaction.

5 And we would go through that
6 transaction to determine if that is the person
7 who is purchasing the firearm or somebody that's
8 not that person.

9 Q. So, someone with a common name is
10 more likely to be kicked to the web queue; is
11 that a fair statement?

12 A. Yes. The other reasons, there are
13 times when the information provided was entered
14 incorrectly.

15 So there are times where maybe the
16 date of birth was entered incorrectly, the name
17 was entered incorrectly by the dealer, you know,
18 they mistyped the name, you know, or added an
19 extra character in the name when they submitted
20 it, so there is times where that will kick it out
21 to us.

22 If the person is using DMV, our
23 system is designed to compare the information
24 entered with the Oregon DMV response. So if
25 there's a discrepancy there, that will send it to

1 an examiner to review.

2 Q. Let's pause there for a second.

3 Sorry. So, for example, I have my Oregon
4 Driver's License. If I'm purchasing a firearm,
5 go through a FFL dealer, the FFL dealer submits
6 my information, mailing address, maybe driver's
7 license number.

8 If there's, I think, a discrepancy
9 on that does that mean -- what does that mean
10 "discrepancy"? If I live in Hillsboro. If they
11 spelled it with one "l" instead of two "ls".
12 Explain what that discrepancy on the DMV system
13 might look like.

14 A. Generally, that would -- it could be
15 a discrepancy in the name; the name entered does
16 not match the name that the Oregon DMV has on
17 file.

18 The date of birth could be different
19 than what the DMV has on file, and the address,
20 if that was entered incorrectly and it does not
21 match, that would send it to somebody to review.

22 Q. Okay. So we've talked about common
23 names. We've talked about maybe a slight
24 difference in a DMV record.

25 What are some other things that

1 might cause the applications to be kicked to the
2 web queue?

3 A. The dealers will enter or submit the
4 firearm information. We query the serial number
5 to see if there are any possible matches to
6 stolen guns that have been entered into the
7 system.

8 So maybe the person does not have
9 any issues, there's no other possibilities, but there
10 is a possible hit on the serial number, so it
11 would cause somebody to do that background check.

12 Q. That could be human error, like,
13 maybe the FFL put in the serial number
14 incorrectly?

15 A. That could be one of the causes, or
16 even the entered serial number is correct and
17 there's a possible match to an entry that another
18 agency entered for a stolen gun.

19 Q. Any other causes that would cause it
20 to be kicked to the web queue?

21 A. That, I think, for the most part
22 would cover it. I can't think if any others at
23 this time.

24 Q. I'm assuming there's a lot of Bob
25 Smiths, and each Bob Smith would assumedly have

1 their own Social Security number. I acknowledge
2 that there could be a lot of Bob Smiths, but I
3 assume that some of the other data points, such
4 as Social Security number or date of birth or
5 even mailing address could greatly reduce the
6 number of Bob Smiths.

7 Tell me what your thoughts are on
8 that and why the common name is still a reason to
9 get kicked to the queue.

10 A. So when we query databases,
11 the -- the databases are queried on the name,
12 date of birth, and social.

13 So those points of information are
14 what the -- the queries that are sent are looking
15 for information matching that, so sometimes if
16 they have two out of three or even something
17 fairly close, we can get a possible kickback, and
18 then we would have to review it.

19 Q. Let's go to the telephone process.
20 The FFL dealer calls your telephone line, gets a
21 live agent, and provides the information to the
22 agent. Tell me about how the agent processes the
23 telephone request and about automatic approval
24 and pended, delayed decisions there.

25 A. So, when the dealer provides the

Page 50

1 A. It was to FICS management, and I
2 believe Wendy was also included on those emails.

3 Q. Let's talk about the application.
4 Does it ever stall out, or I guess the request,
5 does it ever stall out?

6 A. Can you clarify that?

7 Q. Yeah. I've heard that after a
8 certain time frame the background check is
9 canceled, like, after 30 days?

10 A. So, if a background check is
11 submitted to the FICS Unit, the FICS Unit will
12 continue to process that background check until
13 we can provide the dealer with our outcome of
14 approved, denied.

15 A transaction can be canceled by the
16 dealer or by the purchaser through the dealer
17 generally. And if they request that we cancel a
18 background check, we will, but other than that we
19 will continue to process the background check,
20 so...

21 Q. So, here's my personal experience.
22 So I went to Cabela's, purchased a firearm on
23 January 4th. I entered all of my information,
24 double, triple, quadruple checked it.

25 I was not automatically approved. I

1 do have a CHL. And Cabela's called me on
2 March 5th, so it was over 60 days later, saying
3 that it was ready but that I had to resubmit my
4 request because it had been terminated by Oregon
5 State Police.

6 So, does that ring a bell? I mean,
7 not terminated, but canceled.

8 A. So without looking at a specific
9 transactions, you know, I can't tell you the
10 details of what happened.

11 So, can I ask a clarifying question
12 about that?

13 Q. Sure.

14 A. So, did Cabela's say they needed to
15 re-run the transaction?

16 Q. Yes.

17 A. So I think, based on what you are
18 saying and from my experience of what happens,
19 the -- when a 4473 is filled out and a background
20 check is submitted, the -- the FICS Unit does go
21 through the FBI NICS section.

22 That background check is only good
23 for 30 days. So if it takes the FICS Unit longer
24 than 30 days to respond to the FFL with the
25 outcome, and if the transaction is approved, the

1 dealer is required to submit a new NICS check to
2 basically recertify that approval number.

3 Q. I think I followed you, except I got
4 a little bit lost in the FICS and the NICS. So,
5 explain the 30 days with relation between the
6 FICS and the NICS?

7 A. So, when a background check is
8 submitted to OSP, part of our background check
9 process is we query state and federal databases.

10 Q. And this is during the -- it's been
11 kicked to the queue, and this is the process that
12 you're doing during that?

13 A. Every background check that's
14 submitted, federal and state databases are
15 queried, regardless of if it goes into the queue
16 or if it's automatically approved.

17 Q. Right.

18 A. So on the ATF side -- let me back
19 up. So when a background check is submitted to
20 FICS, we query the state and federal databases,
21 which NICS is the group that would do federal
22 background checks.

23 So we send our queries through to
24 get the federal responses. When the form is
25 filled out, the instructions on the form

Page 53

1 basically say that that is only good for 30 days.

2 So, it's not necessarily that OSP
3 canceled the background check. We continue to
4 process it. If it's approved, the dealer -- ATF
5 requires the dealers to basically recertify that
6 approval before they can transfer the firearm, if
7 it hasn't been transferred already.

8 Q. So the ATF Form 4473 is the one that
9 says it's good for 30 days?

10 A. Uh-huh.

11 Q. So, let's move on to NICS. So,
12 first of all, the automatic process, 38 percent
13 are approved automatically. My assumption is is
14 that through that automatic process that both
15 FICS and NICS are checked and it's clear.

16 Is my understanding correct? If
17 not, could you add some color to that, explain
18 that automatic process between FICS and NICS?

19 A. When a background check is
20 submitted, FICS is basically our unit, the
21 Firearm Instant Check System.

22 The -- we query multiple state and
23 federal databases, so when we -- we're basically
24 a point of contact, and our queries go through to
25 basically the FBI, and we receive those queries

Page 58

1 A. Yes.

2 Q. And if the dealer calls in, is there
3 someone always there to pick up the phone or is
4 it the same situation where it can be on hold
5 sort of thing?

6 A. So, the FICS Unit assigns somebody to
7 answer the phone calls that are incoming. Based
8 on the number of calls received, there are times
9 when the dealer would be on hold until there's a
10 background examiner available to answer that
11 call.

12 Q. Is there sometimes that the dealer
13 would leave a message instead of waiting on hold?

14 A. So the -- the 800-number that has been
15 provided to dealers there, at this time there is
16 not a way to leave a message.

17 Q. Is there a different phone number for
18 those dealers calling in for under 21-year-old
19 individuals?

20 A. It would be the same dealer line that
21 they would use anytime they would call the
22 FICS Unit.

23 Q. Okay. Have you heard of dealers
24 waiting for over three hours? I think you said
25 that kind of the maximum wait time was three

1 hours. Is there ever a time where it's more than
2 three hours?

3 A. Not that I have heard from the comments
4 from dealers. What has happened recently,
5 because of the long wait time, is dealers have
6 let us know that the -- the phone system will
7 disconnect them, then they have to call back in
8 and they get basically at the end of that hold
9 line.

10 So, you know, I don't know how often
11 that happens or, you know, if they call back in
12 what -- how long they would be waiting.

13 Q. You said that in a perfect world, if
14 given a perfect world, it would happen in a short
15 time frame?

16 A. Uh-huh.

17 Q. Give me your perfect world scenario.
18 Does that mean lots more employees, a better
19 system? How do you see your perfect world
20 scenario?

21 A. Well, I think anytime -- you know, if
22 we would have additional resources available, we
23 could hire additional people, we could, you know,
24 get them trained faster. Any of those things
25 would help the FICS Unit, yes.

Page 60

1 But sometimes, you know, we're -- you
2 know, we can ask for anything we want, but it
3 doesn't always necessary mean we get the outcome
4 we want from those requests.

5 Q. I understand that, but what would be
6 your ask?

7 A. So, you know, this is just me
8 personally. You know, if we could get additional
9 resources or additional money from the budget,
10 that would help the FICS Unit.

11 Q. By "resources," do you mean employees?

12 A. Employees, yes.

13 Q. How long is too long for a law abiding
14 citizen to wait for a background check to be
15 completed?

16 A. So, OSP doesn't make a determination on
17 how long is too long. We don't make that
18 judgment call. Our job is to process background
19 checks, and we want to do that as, you know,
20 quickly and accurately as possible with the
21 information -- or the resources that we have
22 available.

23 And I know right now with the backlogs
24 there is an additional wait time, but the
25 FICS Unit with -- you know, since the Ballot

Page 83

CERTIFICATE

I, Traci R. Moore, a Professional Court Reporter and Notary Public, hereby certify that said witness KAREN LeJUNE personally appeared before me at the time and place set forth in the caption hereof; that at said time and place I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were transcribed through computer-aided transcription, under my direction; and that the foregoing pages constitute a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

I further certify that review of the transcript was not requested.

Witness my hand at Portland, Oregon, this 12th day of May, 2023.

Traci R. Moore
Professional Court Reporter